

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROSSCO HOLDINGS, INC.

V.

LEXINGTON INSURANCE COMPANY

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CIVIL ACTION NO. 4:09-CV-04047

**PLAINTIFF ROSSCO HOLDINGS, INC.'S UNOPPOSED MOTION TO REINSTATE
AND TO LIFT STAY**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES ROSSCO HOLDINGS, INC. ('Plaintiff'), Plaintiff in the above-entitled and numbered cause and files this, its Motion to Reinstate and to Lift the Stay, and would respectfully show unto the Court the following:

I. Background

Plaintiff filed this case on December 19, 2009 alleging breach of contract and Texas Insurance Code violations arising out of an insurance policy and other agreements entered into between Plaintiff and Defendant. *See* Docket Entry No. 1. On August 2, 2010, Plaintiff filed for Chapter 11 bankruptcy in The United States Bankruptcy Court for the Western District of Texas. On the same day, that court entered an Order for Relief pursuant to Title 11, Chapter 11, United States Code, in case number 10-60952, styled Rossco Holdings, Incorporated, Debtor. Plaintiff filed a Suggestion of Bankruptcy on August 3, 2010 notifying this Court of the bankruptcy case in the Western District. *See* Docket Entry No. 24. On August 9, 2010, this Court entered its Order of Stay on Suggestion of Bankruptcy dismissing this case without prejudice. *See* Docket Entry No. 25.

As this case was filed by the Plaintiff/Debtor rather than against it, Plaintiff now respectfully moves this Court to reinstate this action.

II. This case was not filed ‘against the Debtor’ and should be reinstated

On its face, the automatic stay provided by 11 U.S.C. § 362(a)(1) applies only to actions ‘against a debtor.’ The relevant provision of the Bankruptcy Code provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, . . . operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title. . . .

11 U.S.C. § 362(a)(1).

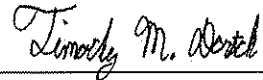
The Fifth Circuit has stated that whether a proceeding is against the debtor within the meaning of Section 362(a)(1) is determined from an examination of the posture of the case at the initial proceeding. *See Freeman v. Commissioner*, 799 F.2d 1091, 1092-1093 (5th Cir. 1986); *see, also, Cal Data Sys. v. NCS Pearson, Inc.*, 2007 U.S. Dist. LEXIS 49785 (S.D. Tex. July 10, 2007) (noting that although the scope of the automatic stay is broad, section 362(a) stays only proceedings ‘against a debtor’). This case was brought by the Debtor/Plaintiff and, accordingly, it should be reinstated.

III. Conclusion & Prayer

Because the automatic stay provided by 11 U.S.C. § 362(a)(1) applies only to actions ‘against the Debtor’, Plaintiff would ask that the Court reinstate the case and lift the stay.

Respectfully submitted,

COOPER & SCULLY, P.C.

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**ATTORNEY FOR PLAINTIFF
ROSSCO HOLDINGS INCORPORATED**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been served upon counsel listed below, as indicated, on this 30th day of August, 2010.

JD Schacht
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Via ECF


TIMOTHY MICAH DORTCH

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff and Defendant have spoken regarding this motion and the reinstatement and relief from stay are unopposed.

Certified the 30th day of August, 2010, by Timothy M. Dortch.



TIMOTHY M. DORTCH